

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

**WASHINGTON HARBOUR, SUITE 400**

**3050 K STREET, NW**

**WASHINGTON, D.C. 20007-5108**

(202) 342-8400

NEW YORK, NY

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES

MUMBAI, INDIA

FACSIMILE

(202) 342-8451

www.kelleydrye.com

TODD D. DAUBERT

DIRECT LINE: (202) 342-8602

EMAIL: tdaubert@kelleydrye.com

April 14, 2010

**VIA ECFS**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

**Re: Notice of Ex Parte Communication: WC Docket No. 05-337;  
CC Docket No. 96-45; and GN Docket Nos. 09-47, 09-51 & 09-137**

Dear Ms. Dortch:

Yesterday, James Ucci of SouthernLINC Wireless, Peter Gose of Coral Wireless LLC, Aaron Gregory of Kelley Drye & Warren LLP and I, on behalf of the Universal Service for America Coalition, met with Austin Schlick, Christopher Killion, Diane Griffin Holland and Sonja Rifken, all of the Office of the General Counsel, and Jennifer McKee of the Wireline Competition Bureau to discuss the issues set forth in the attached documents.<sup>1</sup> Mr. Gregory and I attended the meeting in person while Mr. Gose and Mr. Ucci participated via telephone.

During the meeting, we discussed various issues relating to universal service, including the impact of the recent *Comcast* decision<sup>2</sup> on the ability of the Commission to adopt the recommendations set forth in the National Broadband Plan (the "NBP"). The NBP recommends that the FCC eliminate all universal service support for narrowband telecommunications services (*i.e.*, common carrier services) in order to support only broadband services, which the agency has classified as information services (*i.e.*, non-common carrier services), without substantially increasing the overall size of the fund. This recommendation could be implemented only if the Commission first concludes that universal service funding is unnecessary for traditional narrowband services (*i.e.*, common carrier telecommunication

<sup>1</sup> The USA Coalition consists of four of the nation's leading rural providers of wireless services, and is dedicated to advancing regulatory policies that will enable Americans to enjoy the full promise and potential of wireless communications, regardless of where they live and work. The members of the USA Coalition include Carolina West Wireless, Mobi PCS dba Coral Wireless LLC, SouthernLINC Wireless, and Thumb Cellular LLC.

<sup>2</sup> *Comcast Corp. v. FCC*, No. 08-1291 (D.C. Cir. Apr. 6, 2010).

Ms. Marlene H. Dortch

April 14, 2010

Page Two

services). However, if universal service funding were unnecessary for telecommunications services, the Commission could not credibly maintain that funding of broadband services (*i.e.*, non-common carrier information services) is necessary to further the universal availability of telecommunications services at affordable rates, which is the statutory mandate that underlies the universal service provisions of the Communications Act of 1934, as amended, (the "Act").<sup>3</sup> Consequently, the Commission would have no authority under the Act to fund broadband services for the reasons the United States Court of Appeals for the District of Columbia Circuit emphasized in the *Comcast* decision.<sup>4</sup>

In light of the limits on the scope of the Commission's authority under the Act, the Commission must choose among the following three options:

- The Commission could reclassify broadband services as "telecommunications services," which would permit the agency to fund broadband services pursuant to Title II;
- The Commission could wait for Congress to enact legislation that provides the necessary authority before seeking to implement the NBP's recommendations; or
- The Commission could seek to achieve the goals of the NBP by implementing measures that are based directly upon the provisions of the current Act rather than the specific measures recommended in the NBP.

During the meeting, we urged the Commission to pursue the third option, explaining that the USA Coalition has proposed an alternative approach to universal service reform that would permit the Commission to achieve the goals of the NBP without reclassifying services or waiting for Congress to Act. We asked the Commission to request comment on the USA Coalition's alternative universal service reform proposal in the upcoming Notice of Proposed Rulemaking regarding universal service reform.

---

<sup>3</sup> Section 254(c) of the Act provides in relevant part that universal service "is an evolving level of *telecommunications services* that the Commission shall establish periodically under this section . . ." 47 U.S.C. 254(c)(emphasis added).

<sup>4</sup> As the *Comcast* decision reiterated, the Commission can exercise its Title I ancillary authority only as necessary to achieve a statutorily mandated responsibility like universal service. *Comcast Corp.*, slip op. at 3. As such, if no funding were necessary to achieve the Commission's universal service responsibilities with respect to traditional telecommunications services, the Commission would be unable to justify exercising its Title I ancillary authority to fund information services (*i.e.*, non-common carrier broadband services).

Ms. Marlene H. Dortch  
April 14, 2010  
Page Three

We also explained that the Commission could expeditiously take the following steps to facilitate broadband deployment while it implements the USA Coalition's universal service reform proposal:

- Clarify that ETCs can use funding for broadband networks and equipment that currently are, or soon will be, used to provide supported services;<sup>5</sup> and
- Rule that ETCs can use funding to support broadband internet services so long as the ETC voluntarily agrees to offer the underlying transmission component as a telecommunications service.<sup>6</sup>

By taking these actions, the Commission would facilitate broadband deployment without causing the harms that result from the type of single-winner result auctions recommended in the NBP, as explained in the attached documents.

In any event, the Commission should not eliminate or phase-out funding for traditional telecommunications services (apart from the voluntary commitments of Sprint and Verizon Wireless, which should have been implemented immediately in 2008)<sup>7</sup> until the agency has identified reform proposals that fall within the agency's authority to adopt. Otherwise, the

---

<sup>5</sup> ETCs can use narrowband or broadband networks to provide supported services.

<sup>6</sup> The FCC has already ruled that an internet service provider may choose to offer the transmission component of a broadband service as a telecommunications service. *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, 22 FCC Rcd 5901, 5914-15 (2007). The Commission could exercise its current Title II authority under the Act to add the transmission component of broadband services as a supported service.

<sup>7</sup> It is unclear why the Commission has not already implemented these voluntary commitments as ordered in 2008. Verizon Wireless agreed to a five-year phase-out of its competitive ETC High-Cost support for any properties that it retained after the divestitures mandated in connection with its merger with ALLTEL. *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, WT Docket No. 08-96, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17532, para. 197 (2008). Similarly, Sprint agreed to a five-year phase-out of its competitive ETC high-cost support as part of its transaction with Clearwire. *Applications of Sprint Nextel Corporation and Clearwire Corporation*, WT Docket No. 08-94, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17570, 17612, para. 108 (2008).

KELLEY DRYE & WARREN LLP

Ms. Marlene H. Dortch

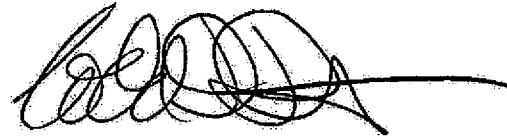
April 14, 2010

Page Four

Commission risks unnecessarily limiting or eliminating its Title I ancillary authority to use universal service funding to facilitate broadband deployment.

Pursuant to Section 1.1206(b) of the Commission's rules, a copy of this letter with attachments is being filed via ECFS with your office. Please contact the undersigned if you have any questions or need additional information.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Todd D. Daubert', with a long horizontal flourish extending to the right.

Todd D. Daubert

*Counsel for the USA Coalition*

cc: Diane Griffin Holland  
Christopher Killion  
Jennifer McKee  
Sonja Rifken  
Austin Schlick